WA 379/2003
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE B.D. AGARWAL

Heard Mr. R.P. Sarmah, learned senior counsel for the appellant and also Mr. BC Pathak, learned senior counsel for the respondent authority.

The appellant as petitioner filed W.P. (C) No. 1702/2000 before this Court challenging the orders passed by Assistant Provident Fund Commissioner under Section 7A as well as under Section 7B rejecting the application for review. The controversy was with regard to the numbers of employees employed by the appellant for the purpose of determining whether the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 would be applicable. The Assistant Provident Fund Commissioner, by the impugned orders, held that the appellant is required under the Act to deposit the provident fund dues under paras - 26 and 29 of the Employees Provident Fund Scheme. Aggrieved thereby, the appellant filed the writ petition.

We have heard the learned counsel for the parties extensively. Mr. Pathak, learned senior counsel for the respondent submitted that the writ petition against an order passed under Section 7A or 7B is not maintainable in view of the provisions in Section 7-I which provides for an appeal to the Tribunal constituted under Section 7B. In the instant case, admittedly, the appellant has not availed the remedy by way of an appeal to the Tribunal as provided under Section 7-I. That apart, the controversy raised with regard to the numbers of employees engaged cannot be determined by this Court in exercise of its writ jurisdiction.

We, therefore, dispose of this appeal with direction to the appellant to prefer an appeal before the learned Tribunal for adjudication of the dispute. Since the appellant has chosen the wrong forum for pursuing the remedy, the Tribunal shall consider and condone the delay in filing the appeal. The learned Tribunal shall dispose of the matter independent of any observation made by this Court. The appellant shall prefer the appeal within four weeks from today.